

ACA's 2018 Achievements in Washington

2018 was a busy year for ACA. We submitted over 120 filings to the FCC on a wide variety of topics and achieved successful outcomes in many proceedings. Below is a description of the proceedings in which ACA's advocacy helped our members.

Pole Attachments

ACA members must get timely access to investor owned utility ("IOU") poles at reasonable cost, especially when they upgrade or expand their networks. The FCC initiated a proceeding in 2017 to update its pole attachment rules, governing cable access to IOU poles in 30 states (and influencing oversight in the others). ACA filed comments, met with FCC staff, and participated in a working group of the Broadband Deployment Advisory Committee. In August, 2018, the FCC adopted a series of reforms advocated by ACA, including establishing a process for determining when an attachment application is complete, providing for joint surveys among pole owners and attachers, requiring pole owners to provide detailed estimates and invoices, enhancing the self-help remedy when pole owners and attachers do not perform on time, not requiring new attachers to fix pre-existing violations, and codifying an overreaching policy that does not require pre-approval by pole owners.

Sinclair-Tribune Merger

Sinclair's proposed purchase of Tribune would have created the largest broadcaster in history—controlled by a company with perhaps the most egregious record of retransmission consent abuse in the industry. ACA and others objected to this merger, explaining how (among other concerns) Sinclair's ownership of multiple top-four rated broadcast stations in a market would result in higher retransmission consent fees for cable operators, and its proposed station divestitures were shams. In part due to ACA's advocacy, the FCC not only rejected the proposed merger, but designated for hearing whether Sinclair had lied in its application. These charges could ultimately bring into question Sinclair's qualifications to hold FCC licenses more generally.

Petition for Partial Waiver of "Accessible User Interface" Requirements

Effective December 2018, FCC rules require smaller cable operators to provide, upon request, set-top boxes with audibly accessible guides and menus. ACA obtained a partial waiver of this rule for its members. In late 2017, ACA conducted research and discovered that the only fully compliant options available for most QAM-based cable systems cost as much as \$100,000. ACA therefore requested and was granted a partial waiver that permits its members to use a TiVo retail device to provide audibly accessible guides and menus, despite the fact that customers using that device will not be able to access two-way services—and was granted a complete waiver for systems offering channels in only an analog format or not offering broadband service. ACA estimates that more than 500 systems qualified for the exemption upon its adoption.

Disney-Fox Transaction

Disney's proposed purchase of cable networks owned by Fox would have combined Disney's ESPN networks with Fox's regional sports networks. This, in turn, would have allowed Disney to increase prices for both sets of sports programming. ACA and others objected to this combination on these grounds. In response to ACA's concerns, the Department of Justice required Disney to divest Fox's regional sports networks. While we do not yet know who will ultimately purchase these sports networks, we are confident that preventing the combination of ESPN and Fox's regional sports networks will save ACA members significant amounts in license fees.

Regulatory Fees

Responding to ACA's continuing advocacy, the FCC significantly reduced the disparity between regulatory fees paid by cable and satellite TV operators for 2018. Specifically, it raised the fees paid by DBS providers from \$0.38 to \$0.47 per subscriber while decreasing the cable operator rate from \$0.95 to \$0.77. To put this victory in perspective, the \$0.18 per subscriber savings in regulatory fees is almost twice the average per-subscriber rate that ACA members pay in annual dues. Moreover, while the DBS rate remains lower than that for cable, the FCC reiterated its commitment to regulatory parity, and ACA will continue to urge the FCC to accelerate its efforts.

Expanding Flexible Use of the 3.7 to 4.2 GHz Band

ACA helped to minimize future harm to cable operators who use the 3.7 to 4.2 GHz band (also known as the "C-Band") for video backhaul as the Commission looks at ways to expand flexible use of the band. First ACA convinced the Commission to lower the cost for cable operators to register their receive-only earth stations already in operation—which made it easier to obtain protection from harmful interference caused by future band users. ACA members taking advantage of this opportunity saved \$400 per registration. ACA also persuaded the FCC to remove language in a proposed Order that would have required cable operators to submit additional information in order to receive any future protections from interference under the new rules.

Farm Bill

ACA obtained numerous improvements in the Farm Bill, which the President signed into law in December. Most importantly, the new law incorporates amendments proposed by ACA and others that would target increased broadband spending by the Rural Utilities Service to areas most lacking in service and where federal agencies are not already providing support. For example, the new law requires RUS funding for broadband loans and loan guarantees to be used only in areas where more than 50% (versus 15% under the old law) of the households lack fixed broadband service with speeds of more than 25/3 Mbps (versus 4/1 Mbps under the old law). Moreover, to ensure federal agencies coordinate their activities, the law requires RUS to consult with the FCC and NTIA to verify the eligibility of areas for support and to ensure RUS does not provide assistance for a project in an area where another agency is already providing support to another entity.

Gray-Raycom Merger

Gray's proposed purchase of Raycom would have created multiple broadcast "top-four duopolies"—giving Gray control of more than one top-four-rated station in a single market. It also could have permitted Gray to exercise "after-acquired station" clauses with respect to certain Raycom stations to be divested, which would have automatically increased retransmission consent rates. In response to ACA's advocacy, both the Department of Justice and the FCC required the merging parties to divest stations in each of the markets in which a top-four duopoly otherwise would have been created. The FCC also made clear that Gray cannot activate after-acquired station clauses with respect to stations to be divested by Raycom. These conditions will save ACA members substantial amounts in retransmission consent fees.

Media Modernization

ACA participated in a number of proceedings related to the Commission's efforts to eliminate or modify outdated and burdensome media regulations. The FCC adopted numerous ACA proposals last year, two of which stand out.

- *Form 325 Data Collection.* Under the previous rules, all large and medium-sized cable operators (and some smaller ones) had to provide the FCC a variety of operational data annually. The FCC eliminated this requirement entirely.

- *Electronic Delivery of MVPD Notices.* The FCC adopted an Order that allows MVPDs to deliver all required subscriber notices via e-mail to a verified e-mail address. The Order also permits MVPDs to respond to certain consumer requests and complaints via e-mail if such complaint or request was submitted via e-mail the person submitting the complaint or request indicates that they prefer to receive a response via e-mail. Finally, the Order eliminated two outdated notice requirements rules related to equipment compatibility issues.

Adjustment of Cable Statutory License Royalty Rates to Account for the Repeal of the FCC’s Sports Blackout Rule

ACA and other representatives of the cable industry successfully resolved a dispute with the major sports leagues regarding a surcharge that the leagues had sought to impose on cable semiannual copyright payments. The leagues had demanded a new compulsory license “sports surcharge” to account for the FCC’s 2014 repeal of the sports blackout rule. Under the settlement’s terms, only cable systems that file the Copyright Office’s “SA-3” Long Form statement of account—which many ACA members do not file—would be required to pay the surcharge for airing of a “local” sporting event that would have had to be blacked out under the old FCC rules. Even for those systems that file SA-3 Long Forms, ACA anticipates few, if any, will be subject to the per event surcharge that was set at 0.025 percent of a system’s gross basic service receipts attributable to the communities where the blackout would have been required. The settlement also requires a showing by the sports team that it invoked the FCC rule prior to its repeal and places a cap on the number of collegiate sports events to which the surcharge applies in an accounting period.

Petition for Permanent Waiver of Emergency Information Pass-Through Requirements for Analog-only Systems

ACA obtained a permanent waiver for analog-only systems of a requirement related to the accessibility of emergency information. The Commission’s rules provide that cable operators must pass through an aural representation of emergency information provided visually (through a text crawl) during non-news broadcast programming. Compliance with this obligation for all-analog systems, which was set to become a requirement on June 12, 2018, would have been prohibitively expensive for these systems, for whom there is no economically feasible method for them to pass-through audio over a secondary stream. ACA estimates that more than 450 analog-only systems remain in operation and thus benefit from the permanent waiver.

Pole Attachment Complaint Process

When pole attachment disputes between investor owned utilities (“IOUs”) and cable operators cannot be resolved, it is critical to have a workable and timely process for filing and hearing complaints with the FCC. ACA advocated for a 180 day shot-clock for pole attachment complaints, and this past July, the FCC adopted such a shot-clock for complaints alleging a denial of access to poles. ACA also worked to ensure that the FCC preserved its requirements that IOUs provide cable operators with key cost information.